

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
)
Request for Review of the)
Decision of the)
Universal Service Administrator by)
)
Immaculate Heart of Mary-St. Casimir School) File No. SLD-290378
Lansing, Michigan)
)
Federal-State Joint Board on) CC Docket No. 96-45✓
Universal Service)
)
Changes to the Board of Directors of the) CC Docket No. 97-21
National Exchange Carrier Association, Inc.)

FEB 2 2003

ORDER**Adopted: February 10, 2003****Released: February 11, 2003**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. This Order dismisses the Request for Review filed by Immaculate Heart of Mary-St. Casimir School (Immaculate Heart), Lansing, Michigan.¹ Immaculate Heart **seeks** review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) on June 17, 2002.² The Commission received Immaculate Heart's Request for Review on September 17, 2002.³

2. For requests seeking review of decisions issued on or after August 13, 2001 under section 54.720(b) of the Commission's rules, any such appeal must be filed with the Commission or SLD within 60 days of the issuance of the decision that the party seeks to have reviewed.⁴

¹ Letter from Lisa Heller and Mary Dalla, Immaculate Heart of Mary-St. Casimir School, to Federal Communications Commission, filed September 17, 2002 (Request for Review).

² See Request for Review; Letter from the School and Libraries Division, Universal Service Administrative Company, to Lisa Heller, Immaculate Heart of Mary-St. Casimir School, dated June 17, 2002 (Funding Commitment Decision Letter). Section 54.719(c) of the Commission's **rules** provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

³ See Request for Review

⁴ 47 C.F.R. § 54.720(b). See *Implementation of Interim Filing Procedures for Filings of Requests for Review, Federal-State Joint Board on Universal Service*, CC Docket No. **96-45**, Order, 17 Rcd 339 (2001), as corrected by *Implementation of Interim Filing Procedures for Filings of Requests for Review, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata (Com. Car. Bur. rel. Dec. 28, 2001 and Jan. 4, 2002); SLD web site, What's New (January 20, 2002), <<http://www.sl.universalservice.org/whatsnew/012002.asp#extend3ed>>.

Documents are considered to be filed with the Commission only upon receipt.⁵ Because the instant Request for Review was not filed within the requisite 60-day period, it will be dismissed without further consideration.

3. To the extent that Immaculate Heart is requesting that we waive the 60-day deadline established in section 54.720(b) of the Commission's rules for its underlying appeal of SLD's denial, we deny that request as well.⁶ The Commission may waive any provision of its rules, but a request for waiver must be supported by a showing of good cause.⁷ Immaculate Heart has not shown good cause for the untimely filing of its appeal with the Commission. Immaculate Heart states that when SLD sent the June 17, 2002 Funding Commitment Decision Letter to the school, the part-time technology coordinator was already on summer break until August 19, 2002.⁸

4. We conclude that Immaculate Heart has not demonstrated a sufficient basis for waiving the Commission's rules. Waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.⁹ In requesting funds from the schools and libraries universal service support mechanism, the applicant has certain responsibilities. The applicant bears the burden of submitting its appeal to SLD or the Commission within the established deadline if the applicant wishes its appeal to be considered on the merits. The June 17, 2002 Funding Commitment Decision Letter clearly states that "your appeal must be ... RECEIVED BY THE SCHOOLS AND LIBRARIES DIVISION (SLD) ... WITHIN 60 DAYS OF THE ... DATE ON [THE FUNDING COMMITMENT DECISION LETTER]" and warns Immaculate Heart that "failure to meet this requirement will result in automatic dismissal of your appeal."¹⁰

5. The particular facts of this case do not rise to the level of special circumstances required for a deviation from the general rule. Here, Immaculate Heart argues that its part-time technology coordinator was unavailable due to the summer break. In order for the program to work efficiently, the applicant must assume responsibility for timely submission of its appeals if it wishes its appeals to be considered on the merits.¹² An applicant must take responsibility for the action or inaction of those employees, consultants and other representatives to whom it gives responsibility for submitting timely appeals of SLD funding decisions on its behalf. Thus,

⁵ 47 C.F.R. § 1.7.

⁶ See 47 C.F.R. § 54.720(b).

⁷ See 47 C.F.R. § 1.3.

⁸ Request for Review at 1.

⁹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁰ Funding Commitment Decision Letter at 2.

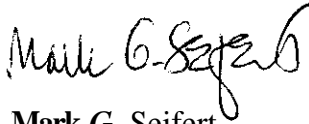
¹¹ *Id.*

¹² See *Request for Review by Anderson School Staatsburg, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610 (Com. Car. Bur. rel. Nov. 24, 2000), para. 8 ("In light of the thousands of applications that SLD reviews and processes each funding year, it is administratively necessary to place on the applicant the responsibility of understanding all relevant program rules and procedures.").

Immaculate Heart fails to present good cause as to why it could not timely file its appeal. We therefore find no basis for waiving the appeal filing deadline.

6. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, **1.3**, and 54.722(a), that the Requests for Review filed on September 17, 2002, by Immaculate Heart of Mary-St. Casimir School, Lansing, Michigan, as well as the request to waive the deadline for filing its appeal are DENIED.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Mark G. Seifert".

Mark G. Seifert

Deputy Chief, Telecommunications Access Policy Division
Wireline Competition Bureau